

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

WATKINS SECURITY AGENCY OF DC, INC., and
COVENANT SECURITY SERVICES, LTD.¹

Employer

and

Case 5-RC-16458

UNITED SECURITY AND POLICE OFFICERS
OF AMERICA (USPOA)

Petitioner

and

INTERNATIONAL UNION, SECURITY,
POLICE, AND FIRE PROFESSIONALS OF
AMERICA (SPFPA)

Intervenor

and

NATIONAL ASSOCIATION OF SPECIAL
POLICE AND SECURITY OFFICERS (NASPSO)

Intervenor

DECISION AND ORDER

Watkins Security Agency of DC (herein called Watkins), a Maryland corporation, and Covenant Security Service, Ltd. (herein called Covenant), an Illinois corporation, and herein collectively called the Employers, are joint employers with an office and place of business located at 200 Constitution Avenue, Northwest, Washington, D.C., (herein called the Washington, D.C. facility) where they provide security services to the United States Department of Labor at that facility.² By a petition under Section 9(c) of the National Labor

¹ The names of the parties appear as amended at the hearing.

² At the hearing, all parties stipulated that the Employers are joint employers, and the record supports such a finding.

Relations Act, filed on May 27, 2010, Petitioner United Security and Police Officers of America (herein Petitioner or USPOA) sought to represent a unit of approximately 125 full-time and regular part-time security officers and sergeants employed by Watkins at the Washington, D.C. facility, the only facility involved herein. The International Union, Security, Police and Fire Professionals of American (herein called SPFPA), the incumbent union, and another labor organization, National Association of Special Police and Security Officers (herein called NASPSO), moved to intervene in this matter and those motions were granted. A hearing officer of the Board held a hearing and Intervenor SPFPA filed a brief with me.³

The sole issue presented here is whether, pursuant to well-established contract bar principles, the instant petition was timely filed within the 30-day window period of the collective-bargaining agreement between the Employers and SPFPA, or whether Petitioner's stipulation at the hearing to amend its petition to name joint employer Covenant and include Covenant guards in the petitioned-for unit operated to modify the filing date to fall within the insulated period of that expiring contract, compelling dismissal of the petition.

Petitioner takes the position that the original filing date of its petition is controlling, and that its failure to name Covenant, or to include its guards therein, is no more than a technical defect. It argues that Covenant is merely an uninvolved subcontractor which plays no role in collective bargaining or labor relations issues that pertain to the unit, and that Petitioner's intentions were, at all times, to include all guards employed at the Washington, D.C. facility, regardless of the nominal entity for which they work. Petitioner explains that the number of guards it identified on the petition was based on information it had, and did not represent a failure to include those employed by Covenant.

³ The Petitioner, Employers and Intervenor NASPSO waived the filing of briefs.

Intervenor SPFPA contends that that the petition as originally filed seeks an inappropriate unit and therefore should be dismissed, inasmuch as it excludes Covenant and the guards it employs at the Washington, D.C. facility.⁴ It argues that Petitioner never amended its petition to include Covenant guards and, in the alternative, takes the position that if it is found that an amendment was made at the hearing, it would be so substantial as to alter the filing date of the petition, thereby making the controlling filing date one occurring in the 60-day insulated period of the expiring agreement between the Employers and SPFPA.

The Employer and Intervenor NASPSO decline to state a position on the timeliness of the petition, but contend that any appropriate unit must include all guards employed by both Watkins and Covenant at the Washington, D.C. facility. As discussed below, I conclude that the petition should be dismissed because it is barred by the current contract between the Employers and Intervenor SPFPA.

I. OVERVIEW

On or about November 19, 2008, this Region certified SPFPA as the exclusive bargaining representative of all non-supervisory guards employed by Coastal International Security, Inc., a contractor which was providing security personnel to the United States Department of Labor at the Washington, D.C. facility. On or about March 15, 2009, Watkins was awarded the contract by the United States Government to provide security services to the United States Department of Labor at the Washington, D.C. facility. Watkins and SPFPA reached a collective-bargaining agreement on or about August 27, 2009, which is effective by its terms through July 31, 2010. In order to assist in fulfilling its contract with the United States Government, Watkins reached an agreement with Covenant, a minority subcontractor. On or about November 6, 2009, Covenant

⁴ At the hearing and in its brief, Intervenor SPFPA argues that the original petition refers to guards in the exclusion section. I am not persuaded that this was anything other than a clerical error and therefore has no bearing on the disposition of this petition.

and SPFPA agreed that it would be bound by the terms of the August 27, 2009 collective-bargaining agreement between Watkins and SPFPA.

Watkins directly employs all supervisors at the Washington, D.C. facility. The highest ranking individual there is the Project Manager, who is an employee of Watkins. Additionally, Watkins hires all the guards at the Washington, D.C. facility and then determines whether the hired guard will work for Watkins or for Covenant while at the facility. All guards employed by both Watkins and Covenant wear the same uniform, including a patch that says Watkins/Covenant. The non-supervisory guards all perform the same jobs, hold the same posts, and have the same duties. They are covered by the same terms of the collective-bargaining agreement, the same work rules, and receive the same training. While guards of both employers are subject to the same collective-bargaining agreement, Watkins officials issue discipline to guards employed by both companies because they are the only supervisors on site. However, the employers handle grievances separately; a representative of Watkins handling labor relations and grievances for the guards it employs, and a representative of Covenant handling grievances and labor relations for its guards. Additionally, Watkins and Covenant guards are paid on different pay dates and through different payroll systems, and Covenant has its own separate 401(k) plan for retirement benefits. Although there is some question as to the exact number of guards employed at the site, it is not disputed that approximately 51% of the guards are employed by Watkins and 49% of the guards are employed by Covenant. The record established that as many as 70 guards are employed at times by Watkins, and at other times by Covenant, in order to maintain the above-referenced percentage balance between the two companies. There is evidence that there are more than 200 guards employed jointly by both companies at the site.⁵

⁵ The evidence presented at the hearing regarding the number of guards differs. Intervenor SPFPA asserts that there are 215 guards, of which 139 are employed by Watkins and 76 are employed by Covenant, and submitted a list of

Functionally, there is no difference in the job duties of guards for either company. Based on these facts, and the record as a whole, the parties stipulated, and I find, that Watkins and Covenant are joint employers.⁶

On May 27, 2010, Petitioner filed a petition seeking to represent all full-time and regular part-time security officers and sergeants employed by Watkins at the Washington, D.C. facility. The petition sought a unit of 125 guards and did not name Covenant. At the hearing, all parties including the Petitioner stipulated that Watkins and Covenant are joint employers, and that the petitioned-for unit was not an appropriate one because it failed to name Covenant and its guards. The Petitioner admits that it was aware of Covenant and that its intent was to petition for all the guards employed at the site; however, it believed it was not necessary to name Covenant on the original petition. Nevertheless, the Petitioner stipulated that the only appropriate unit is one including guards employed by both Watkins and Covenant.⁷ Accordingly, all parties stipulated, and I find, that the appropriate unit is one that includes guards of both Watkins and Covenant.

II. ANALYSIS

As a predicate matter, I find that the Petitioner did, in fact, amend its petition at the hearing to name Covenant and include its guards. Contrary to SPFPA's position, it is clear that when asked by the Hearing Officer if it sought to amend its petition in this regard, Petitioner responded in the affirmative, after which the amendment was permitted. Requiring more of the

such guards to reflect that. The Employers also presented a list of guards that was in the range of 239, of which 163 are employed by Watkins and 76 are employed by Covenant. However, multiple names appear on the Employers' list as both a Watkins and a Covenant guard. The same 76 names appear as Covenant guards on both the list provided by the Employers and the list provided by Intervenor SPFPA.

⁶ A joint employer relationship anticipates two separate companies which have simply chosen to jointly handle important aspects of their employer-employee relationship. See *NLRB v. Browning-Ferris Industries*, 691 F.2d 1117 (3d Cir. 1982). Based on the stipulation and record evidence, it is clear that Watkins and Covenant are joint employers.

⁷ All parties agree, and I find, that there is no dispute as to the classification of the guards employed by either company.

Petitioner, in the form of either a written or formal motion, would be placing form over substance.

There can be no dispute that the original petition, filed on May 27, 2010, was filed within the window period during which such petitions are ordinarily processed pursuant to well-established contract bar principles. The contract expires on July 31, 2010. Thus, the original petition was filed on the 65th day, well within the 60-90 day time-frame provided for under the contract bar doctrine. At issue, however, is whether Petitioner's amendment at the hearing operated to alter the filing date of the petition, for purposes of a contract bar analysis, thereby placing the filing within the insulated period and thus compelling dismissal. In *Deluxe Metal*, the Board held that where a petition is amended, the filing date of the original petition remains the controlling date for a contract bar analysis, only "if the employers and the operations or employees involved were contemplated by or identified with reasonable accuracy in the original petition, or the amendment does not substantially enlarge the character or size of the unit or the number of employees . . ." *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000, n. 12 (1958); *Dobbs International Services, Inc.*, 323 NLRB 1159 (1997); compare *Brown Transport Corp.*, 296 NLRB 1213 (1989). Applying the principle in *Dobbs International Services*, the Board found the original filing date controlling where an amendment to a petition merely named a joint petitioner, and eliminated reference to a location and to certain job classifications. Significant was the fact that the amendment did not in any way enlarge the size of the unit or the number of employees covered by the amended petition. *Dobbs International*, 323 NLRB at 1160.

In stark contrast, in the instant case, Petitioner's late-filed amendment at the hearing substantially enlarged the size of the unit. It is clear that neither Covenant nor its employees were named with any degree of reasonable accuracy in the original petition. Initially, the

petition only named Watkins, despite the fact that the Petitioner was aware of Covenant's existence. Petitioner argues that naming Covenant is not necessary because of the relationship between it and Watkins. However, the record belies such an assertion, making clear that the two companies operate at an arm's length, have separate payroll procedures, and hear contractual grievances separately. Covenant, while a joint employer, has independent exercise and control over its employees. This is further shown through payroll procedures, disciplinary authority, and its having independently agreed to adhere to the terms of the Watkins negotiated collective-bargaining agreement.

Nor did the Petitioner's original petition seek Covenant's guards. I am mindful of Petitioner's position that the Employers are in the best position to know the number of employees in the unit and that the number on the petition was based only on the information it had at the time of the original filing. However, while the record is unclear as to the precise number of guards in the unit, see footnote 5 above, the 125 guards Petitioner believed were in the unit when it filed the petition falls far short of the more than 200 guards who are in the combined Watkins-Covenant unit. Significantly, 76 of those guards are employed by Covenant. This substantial difference in number, coupled with Petitioner's failure to name Covenant in the original petition, underscores my conclusion that the amended petition seeks a substantially larger unit that differs in character from that sought in the original petition.

In view of these findings, under *Deluxe Metal*, the amended petition is "treated as a new petition filed on the date of the amendment." The collective-bargaining agreement expires July 31, 2010, and thus the window period ended on June 3, 2010. The petition was amended on June 21, 2010, which is inside the insulated period. Accordingly, the petition is untimely and is hereby dismissed.

ORDER

The petition is dismissed.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **July 14, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁸ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

⁸ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab and then click on E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: June 30, 2010

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
103 S. Gay Street
Baltimore, MD 21202